**Civil Liberties**

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The Supreme Court ruled that sentencing a juvenile offender to life in prison violates the Eighth Amendment’s prohibition of “cruel and unusual punishments.”

**What We Learned**

***1. What is the constitutional basis for civil liberties in America?*** The Bill of Rights and the Fourteenth Amendment are the most important constitutional provisions affecting civil liberties policymaking. The Due Process Clause of the Fourteenth Amendment is the basis for the selective incorporation of the Bill of Rights to the states. The rights guaranteed by the Bill of Rights are not absolute; the government can restrict individual rights and liberties when it has sufficient reason. A fundamental right, such as freedom of expression or freedom of religion, is a constitutional right that is so important that government cannot restrict it unless it can demonstrate a compelling or overriding public interest for so doing. To restrict rights that are not fundamental, government need only show that it is acting in pursuit of a legitimate public purpose.

***2. What freedoms does the First Amendment guarantee?*** The First Amendment prohibits government from making laws "respecting an establishment of religion” Or interfering with the “free exercise” of religion. The Supreme Court has always ruled government-sponsored school prayer unconstitutional, but has adopted a middle ground on establishment issues such as school vouchers, balancing a separation of church and state with accommodation between government and religion. It is unconstitutional for the government to deliberately restrict the activities of religious groups without a compelling government interest, but states can enact laws that have an incidental impact on religious freedom so long as they serve a valid state purpose and are not aimed at inhibiting any particular religion.

The First Amendment also protects freedom of expression. The Supreme Court has held that the government can restrict political expression only if it has a compelling interest that cannot be achieved by less restrictive means. The Court has ruled that symbolic expression, such as flying a flag or burning it, should be treated the same as other types of expression. The Supreme Court distinguishes between expression and action. Protestors do not have a constitutional right to disrupt traffic, block sidewalks, or impede access to public places.

Finally, freedom of the press is considered a fundamental right, which means that government cannot restrict it unless it can demonstrate a compelling or overriding public interest for so doing. The U.S. Supreme Court has ruled that the government has a compelling interest in prohibiting obscenity and protecting individuals from defamation of character. The Supreme Court has held that prior restraint is such an extreme limitation on freedom of the press that it can be used only in exceptional circumstances, such as times of war.

***3. What is the basis for a constitutional right to privacy and to what sorts of controversies has the right to privacy been applied?*** Although the Constitution does not specifically mention privacy, the Supreme Court has interpreted the Due Process Clause of the Fourteenth Amendment to include a right of privacy. After striking down a Connecticut law that prohibited the use of contraceptives, the Supreme Court based Roe v. Wade, the famous abortion decision, on a right to privacy. The Supreme Court also based its decision to overturn the Texas sodomy law on a constitutional right of privacy.

***4. What are the constitutional rights of people accused of crimes?*** Due process of the law is the key constitutional provision protecting the rights of persons investigated for or accused of crimes. The Fourth Amendment protects against unreasonable searches and seizures. The Courts have upheld the exclusionary rule and the Miranda warning, but in recent decades have weakened both. The Constitution prohibits double jeopardy and guarantees a fair trial. The death penalty is the most controversial issue arising under the prohibition against cruel and unusual punishments, and there is growing debate over the fairness of capital punishment.

***5. What civil liberties issues are raised by the conduct of the War on Terror?*** Executive authority grows during wartime, sometimes at the expense of civil liberties. In the midst of war, presidents exercise extraordinary powers and declare that their actions are necessary to defend the nation and win the war. Once the war has ended, civil libertarians are typically able to reverse actions taken during wartime. After 9/11, President George W. Bush took actions that some critics charged threatened civil liberties protections. Subsequently, the U.S. Supreme Court and the Obama administration overturned or modified many of the Bush administration’s actions.

**TIPS FOR SUCCESS**

**Being smart is overrated:** The way to succeed isn’t to be smarter or more talented than everyone else, it’s to work harder.

**Take notes and study them.** Outline your professor’s lectures and study them as closely as you study the textbook.

**Key Terms**

**Bill of Rights**

the first ten amendments to the U.S. Constitution

**Capital Punishment**

the death penalty

**Civil Liberties**

the protection of the individual from the unrestricted power of government

**Double Jeopardy**

the government trying a criminal defendant a second time for the same offense after an acquittal in an earlier prosecution

**Due Process of Law**

the constitutional principle holding that government must follow fair and regular procedures in actions that could lead to an individual’s suffering loss of life, liberty, or property

**Exclusionary Rule**

the judicial doctrine stating that when the police violate an individual’s constitutional rights, the evidence obtained as a result of police misconduct or error cannot be used against the defendant

**Fundamental Right**

a constitutional right that is so important that government cannot restrict it unless it can demonstrate a compelling or overriding public interest for so doing

**Hate-Crimes Law**

a legislative measure that increases penalties for persons convicted of criminal offenses motivated by prejudice based on race, religion, national origin, gender, or sexual orientation

**Libel**

false written statements

***Miranda*** **Warning** Before questioning, accused persons must be warned that 1) they have a right to remain silent; 2) that any statements they give may be used against them; and 3) that they are entitled to the presence of an attorney, either retained or appointed

**Parental Choice**

an educational reform aimed at improving the quality of schools by allowing parents to select the school their children will attend

**Prior Restraint**

government action to prevent the publication or broadcast of objectionable material

**Probable Cause**

the reasonable suspicion based on evidence that a particular search will uncover contraband

**Slander**

false spoken statements

**Warrant**

an official authorization issued by a judicial officer

**Discussion Questions**

1. What is the constitutional basis of civil liberties in America?

2. What is the Establishment of Religion Clause? How has it been interpreted by the Supreme Court? To what extent may government constitutionally restrict the free exercise of religion?

3. Under what circumstances can the government limit free expression?

4. What provisions in the Constitution are designed to ensure a fair trial?

5. In what ways might the conduct of the War on Terror threaten civil liberties? Do you think Americans should be willing to give up certain liberties in the interest of national security?

**Interactive Activity**

**Simulation: You Are a Police Officer**

Few people deal with civil liberties as frequently as police officers. Originally granted to citizens through the Constitution’s Bill of Rights, the nature of these freedoms has evolved over time through judicial review and legislation. Police officers must understand the current, practical interpretation of our First Amendment rights, the Fourth Amendment protection against “unreasonable searches and seizures,” the Fifth Amendment protection from self-incrimination, and many others. When can the police search private property? Can people be arrested for criticizing the government? How much power does law enforcement have if they suspect someone of being a criminal? In this activity, you will examine these and other issues as a New York City police officer confronted with several different real-world scenarios involving civil liberties and constitutional rights. In the process you will better comprehend the concepts of constitutional rights, learn the rules regarding search and seizure, and understand how suspects should be treated by law enforcement.

[View Simulation](http://www.ablongman.com/cmsredirects/long_mypoliscilab_2009/sim.youareapoliceofficer.html)

**“Talking About American Government” Podcasts**

Author Neal Tannahill discusses the most important concepts in this chapter

* [Free Exercise Clause](http://abavtooldev.pearsoncmg.com/VPStreaming/audio.php?clipID=ab_amgov_think_tennahill/ch15_free_exercise.mp3)
* [Establishment Clause](http://abavtooldev.pearsoncmg.com/VPStreaming/audio.php?clipID=ab_amgov_think_tennahill/ch15_establishment_clause.mp3)
* [Constitutional Right to Privacy](http://abavtooldev.pearsoncmg.com/VPStreaming/audio.php?clipID=ab_amgov_think_tennahill/ch15_privacy.mp3)